

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:	:	BANKRUPTCY NO. 20-10334 TPA
	:	
JOSEPH MARTIN THOMAS,	:	JUDGE THOMAS P. AGRESTI
Debtor.	:	
	:	CHAPTER 11
JOSEPH MARTIN THOMAS,	:	
Movant,	:	DATE AND TIME OF HEARING:
	:	November 19, 2020 @ 1:00 p.m.
v.	:	
	:	RESPONSE DEADLINE:
	:	November 9, 2020
TOWNSHIP OF GREENE, TAX	:	
COLLECTOR; GREENE TOWNSHIP	:	
SEWER AUTHORITY; CHARLES R.	:	
BURGER and MARGARET J. BURGER, their	:	
heirs, successors, and assigns; PNC BANK,	:	
NATIONAL ASSOCIATION; WELLS	:	
FARGO BANK, NATIONAL	:	
ASSOCIATION; UNITED STATES OF	:	
AMERICA, INTERNAL REVENUE	:	
SERVICE; COMMONWEALTH OF	:	
PENNSYLVANIA, DEPT. OF REVENUE;	:	
and RICHARD A. MLAKAR and CYNTHIA	:	
A. MLAKAR;	:	
Respondents.	:	

MOTION FOR PRIVATE SALE OF REAL PROPERTY
FREE AND DIVESTED OF LIENS

AND NOW, comes the Debtor, Joseph Martin Thomas, by and through his attorneys, Michael P. Kruszewski, Esquire of The Quinn Law Firm, and files this Motion for Private Sale of Real Property Free and Divested of Liens of which the following is a statement:

PARTIES

1. The Movant, Joseph Martin Thomas (hereinafter "Debtor"), is an individual with a place of business located at Tri-State Pain Institute, 2374 Village Common Drive, Erie, Pennsylvania 16506. The Debtor is represented by Michael P. Kruszewski, Esquire and The Quinn Law Firm, 2222 West Grandview Boulevard, Erie, Pennsylvania 16506.

2. The following named Respondents either appear to have liens on the real property which is the subject of this sale, or alternatively, are named as Respondents for the purpose of notifying them that a sale of the subject property, to which they may have some claim, is being proposed:

(a) Tax Collector, Township of Greene, is a taxing authority with a mailing address of 8628 Wattsburg Road, Erie, Pennsylvania 16509. The Tax Collector, Township of Greene is being named as a Respondent in regard to the real estate taxes that will be due on the subject property in regard to the year 2020.

(b) Greene Township Sewer Authority is a township authority with a mailing address of 9333 Tate Road, Erie, Pennsylvania 16509. Greene Township Sewer Authority is being named a Respondent in regard to any possible charges that may be due and owing. Greene Township Sewer Authority is represented by Natalie Ruschell, Esquire, Ruschell & Associates, 9333 Tate Road, Suite 115, Erie, Pennsylvania 16509 or 308 Eaton Avenue, P.O. Box 577, Midway, Pennsylvania 15060.

(c) Charles R. Burger and Margaret J. Burger who, upon information and belief, are deceased, were adult individuals formerly residing at 9890 Wattsburg Road, Erie, Pennsylvania 16509. Charles R. Burger and Margaret J. Burger, their heirs, successors, and assigns, are being named as Respondents because they were the holders of a Mortgage on the subject property dated March 21, 1994 and recorded on March 22, 1994 in Erie County Record Book 324, Page 2382 in the face amount of \$28,997.32, a copy of which is attached hereto as Exhibit "A".

a. It is believed and therefore averred that this Mortgage has been paid in full; however, the satisfaction piece filed in the records of the Office of the Recorder of Deeds for Erie County, Pennsylvania references Joseph "R."

Thomas, rather than Joseph "M." Thomas, a copy of which is attached hereto as Exhibit "B".

- b. It is further believed and therefore averred that, given that the satisfaction piece references the Burgers, the correct Mortgage between the Burgers and the Debtor, and the correct Book and Page numbers for said Mortgage, the intent to satisfy that Mortgage is evident by the filing of the satisfaction piece, and the use of the middle initial "R." was a mere misnomer or "scrivener's error".
- c. Nevertheless, out of an abundance of caution, the Debtor has endeavored to serve the Burgers' known surviving children at their last known addresses and to publish standard bankruptcy sale notice pursuant to this Motion that seeks to notify the heirs, successors, and assigns of the Burgers that any interest in the subject property will be extinguished upon this Court's entry of any free and clear sale order.

(d) PNC Bank, National Association is a banking institution with a place of business located at 2730 Liberty Avenue, Pittsburgh, Pennsylvania 15222 and a mailing address of P.O. Box 9498, Cleveland, Ohio 44101 PNC Bank, National Association is being named as a Respondent because it is the holder of a Mortgage on the subject property dated January 13, 2009 and recorded on January 26, 2009 in Erie County Record Book 1540, Page 1771 in the face amount of \$75,000, a partial copy of which is attached hereto as Exhibit "C". It is believed that the payoff on this Mortgage is approximately \$66,046.48. PNC Bank, National Association is represented by Brian Nicholas, Esquire, KML Law Group, PC, BNY Mellon Independence Center, 701 Market Street, Suite 5000, Philadelphia, Pennsylvania 19106.

(e) The Respondent, Wells Fargo Bank, National Association, is a banking institution with a place of business located at 4101 Wiseman Blvd., Building 307, San Antonio, Texas 78251 and Wells Fargo Bank, N.A., c/of Steven Treadway, 1620 E. Roseville Parkway, 1st Floor, Suite 100, MAC A1792-018, Roseville, California 95661. Wells Fargo Bank, National Association is being named as a Respondent because it is the holder of a Mortgage on the subject property dated December 22, 2016 and recorded on December 22, 2016 at Erie County Instrument No. 2016-027941 in the face amount of \$1,208,000, a partial copy of which is attached hereto as Exhibit "D"¹. Wells Fargo Bank, National Association, is also a party to an Assignment of Rents dated December 22, 2016 and recorded on December 22, 2016 at Erie County Instrument No. 2016-027944, a partial copy of which is attached hereto as Exhibit "E". It is believed that the payoff on this Mortgage is approximately \$572,493.98. Wells Fargo Bank, National Association is represented by Salene Mazure Kraemer, Esquire, Bernstein-Burkley PC, 707 Grant Street, Suite 2200, Gulf Tower, Pittsburgh, Pennsylvania 15219.

(f) The United States of America, Internal Revenue Service is an agency of the United States Government with the following service addresses:

- Attorney General of the United States, U.S. Dept. of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530;
- Internal Revenue Service, 1000 Liberty Avenue, Stop 711B, Pittsburgh, Pennsylvania 15222-3714;
- United States Attorney's Office, Western District of Pennsylvania, ATTENTION: Civil Process Clerk, Joseph F. Weis, Jr. U.S. Courthouse, 700 Grant Street, Suite 4000, Pittsburgh, Pennsylvania 15219;

¹ The underlying debt owed to Wells Fargo Bank, National Association is also secured by a first mortgage on real estate located at Lot 15 Village Common Drive, Erie, Pennsylvania 16506, Tax Identification No. 33-123-418-0-034.01, in addition to assets pledged by Greater Erie Surgery Center, LLC and Tri-State Pain Institute, LLC.

- United States Attorney's Office, Western District of Pennsylvania, ATTENTION: Civil Process Clerk, 17 South Park Row, Suite A330, Erie, Pennsylvania 16501;
- Scott W. Brady, Esquire, U.S. Attorney for the Western District of Pennsylvania, Joseph F. Weis, Jr. U.S. Courthouse, 700 Grant Street, Suite 4000, Pittsburgh, Pennsylvania 15219.
- Internal Revenue Service, ATTENTION: Centralized Insolvency Operations, P.O. Box 7346, Philadelphia, Pennsylvania 19101.
- Internal Revenue Service, P.O. Box 7346, Philadelphia, Pennsylvania 19101-7346.
- Internal Revenue Service, P.O. Box 7317, Philadelphia, Pennsylvania 19101-7317.

The United States of America, Internal Revenue Service is being named as a Respondent as it is the following Federal Tax Liens have been entered in the Court of Common Pleas of Erie County, Pennsylvania:

<u>Creditor</u>	<u>Date of Entry of Lien</u>	<u>Description of Lien</u>	<u>Amount of Lien</u>
Internal Revenue Service	June 15, 2018	Federal Tax Lien entered on June 15, 2018 at Case No. 30954-2018 in the amount of \$255,140.32.	\$255,140.32
Internal Revenue Service	July 9, 2018	Federal Tax Lien entered on July 9, 2018 at Case No. 31126-2018 in the amount of \$187,570.67.	\$187,570.67

The Debtor has been making payments on the tax obligations that are included in the above-referenced tax liens and it is believed that the current balance due on these tax liens is approximately \$275,976.77.

(g) The Respondent, Commonwealth of Pennsylvania, Dept. of Revenue, is a governmental agency with service addresses as follows:

- Pa. Dept. of Revenue, Bankruptcy Division, P.O. Box 280946, Harrisburg, Pennsylvania 17128-0946.
- Attorney General of Pennsylvania, Western Regional Office, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

- Pa. Dept. of Revenue, 4th & Walnut Street, Harrisburg, Pennsylvania 17128.

The Commonwealth of Pennsylvania, Dept. of Revenue is being named as a Respondent because the following liens have been entered in the Court of Common Pleas of Erie County, Pennsylvania:

<u>Creditor</u>	<u>Date of Entry of Lien</u>	<u>Description of Lien</u>	<u>Amount of Lien</u>
Pa. Dept. of Revenue	December 10, 2018	Tax Lien entered on December 10, 2018 at Case No. 32118-2018 in the amount of \$38,193.59.	\$38,193.59
Pa. Dept. of Revenue	February 4, 2019	Tax Lien entered on February 4, 2019 at Case No. 30321-2019 in the amount of \$20,512.12.	\$20,512.12

Debtor has been making payments on the tax obligations that are included in the above-referenced tax liens and it is believed that the current balance due on these tax liens is approximately \$24,464.91. The Commonwealth of Pennsylvania, Dept. of Revenue is represented by Lauren Michaels, Esquire, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

(h) The Respondents, Richard A. Mlakar and Cynthia A. Mlakar, have a mailing address of 7710 N. Soledad Ave., Tucson, AZ 85741 and are being named as a Respondents because they are the prospective purchasers of the subject property.

JURISDICTION AND VENUE

3. On May 6, 2020, the Debtor filed a voluntary Chapter 11 Bankruptcy Petition under title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United

States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court"), at Case No. 20-10334 TPA.

4. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§ 157 & 1334. This Court has venue over these proceedings pursuant to the provisions of 28 U.S.C. §§ 1408 & 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(N).

5. The statutory basis for the relief requested herein are Sections 105(a) and 363 of the Bankruptcy Code, Rule 6004 of the Federal Rules of Bankruptcy Procedure, and Rules 6004-1 and 9013-3(c) of the Local Bankruptcy Rules of the Bankruptcy Court.

REAL PROPERTY

6. The Debtor holds such title to the Estate as the Bankruptcy Code confers upon him.

The Estate consists, in part, of the following:

The real estate located at 9830 Wattsburg Road, Erie, Pennsylvania 16509 situate in the Township of Greene, County of Erie, and Commonwealth of Pennsylvania, acquired by Deed of James G. Kuhn, widower and un-remarried, dated August 7, 1992 and recorded on August 10, 1992 in Erie County Record Book 225, Page 1237, as well as a Deed from Charles R. Burger and Margaret J. Burger, husband and wife, dated March 18, 1994 and recorded March 22, 1994 in Erie County Record Book 324, Page 2379. An additional Deed dated March 21, 1994 was recorded on April 5, 1994 in Erie County Record Book 327, Page 1765 to confirm the prior transfers and create one parcel of real estate.

Copies of the Deeds are attached hereto and made a part hereof as Exhibits "F", "G", and "H".

7. Based upon market comparables, and consistent with the listing price for the property, it is believed and therefore averred that the fair market value of the property is approximately \$299,900.00.

OFFER

8. The Debtor has secured an offer for the subject property from Richard A. Mlakar and Cynthia A. Mlakar in the amount of \$299,900.00. A copy of the Agreement for the Sale of Real Estate is attached hereto, made a part hereof and marked as Exhibit "I"².

LIENS

9. The real property proposed to be sold either appears to be validly encumbered by the liens identified at Exhibit "J" to this Motion, or alternatively, the Respondents identified at Exhibit "J" are being notified of the proposed sale in order to divest and transfer any potential lien or claim they may have to the subject property.

10. The Debtor believes that the offer of \$299,900.00 for the real property is fair and should be accepted. He proposes that the encumbrances and other claims identified at Exhibit "J" to this Motion, to the extent that they validly encumber the subject property, be divested and transferred to the proceeds of sale.

11. The Debtor also proposes that the funds created by the sale be subject to the prior payment of certain administrative costs and expenses allowed by the Court, including but not limited to, the filing fee for the Motion to Sell Property of the Estate Free and Clear of Liens in the amount of \$181.00, as well as the actual out-of-pocket costs for advertising in both the Erie Times News and the Erie County Legal Journal.

12. The Debtor also proposes payment of all usual and ordinary costs of sale, including but not limited to, the following:

² The Agreement for the Sale of Real Estate contains a mortgage contingency; however, the proposed purchasers have already been pre-approved for a conventional mortgage, thus it is expected that this contingency will be fully satisfied prior to the time of the hearing on the Motion for Sale.

- a) Payment of no more than \$1,500.00 in fees to be paid to the closing agent who represents the Debtor at the time of the real estate closing;
- b) Any and all municipal fees, as well as any and all water and sewer charges, if applicable;
- c) Payment of any and all delinquent real estate taxes;
- d) Current real estate taxes, pro-rated to the date of closing;
- e) Transfer Taxes shall be paid in accordance with the terms of the Agreement for Sale attached to the Motion for Private Sale of Real Property Free and Divested of Liens. Debtor is to pay one-half ($\frac{1}{2}$) of the transfer taxes due and owing, which equals 1% of the purchase price or \$2,999.00.
- f) Payment of the Court approved realtor commission of 6% in the amount of \$17,220.00;
- g) Payment in full of the first mortgage lien on the real estate located at 9830 Wattsburg Road, Erie, Pennsylvania 16509 in favor of PNC Bank, National Association, in the approximate principal amount of \$66,046.48, plus interest and satisfaction costs;

13. The net proceeds from the sale, after payment of the first Mortgage, broker's commission, attorneys' fees, and the usual and ordinary costs of sale outlined above shall be paid as follows:

- a) The sum of \$29,990.00 (10% of the sale price) from the net proceeds shall be paid to Debtor's counsel, Michael P. Kruszewski, Esquire and the Quinn Law Firm on account of approved and anticipated, necessary costs and expenses of the administration of the Bankruptcy Estate. Said sum shall be partially distributed by Debtor's counsel on account of approved costs/expenses of administration and/or held by Debtor's counsel in trust until such costs and expenses are approved by the Court.
- b) The remaining net proceeds, currently estimated to be approximately \$174,000.00, shall be payable towards the second mortgage lien on the real estate located at 9830 Wattsburg Road, Erie, Pennsylvania in favor of Wells Fargo Bank, National Association, with an approximate principal balance due of \$572,493.98, plus interest and satisfaction costs if applicable.

WHEREFORE, the Debtor, Joseph Martin Thomas, respectfully requests this Honorable Court enter an Order confirming the private sale of real property to Richard A. Mlakar and Cynthia A. Mlakar for \$299,900.00, subject to higher bids and grant such other relief as this Court deems appropriate.

Respectfully submitted,

THE QUINN LAW FIRM

BY: /s/Michael P. Kruszewski

Michael P. Kruszewski, Esquire

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